

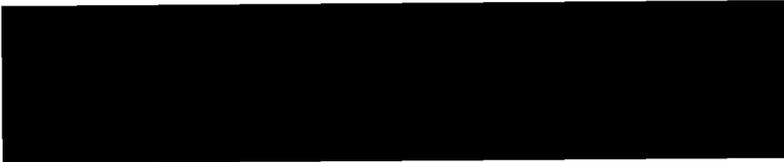
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: MAY 11 2011 Office: HARTFORD, CT

FILE:

IN RE:

PETITION: Petition for Special Immigrant Juvenile Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Hartford, Connecticut, denied the special immigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 15-year-old native and citizen of Mexico who seeks classification as a special immigrant juvenile (SIJ) pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4).

The director denied the petition finding that the juvenile court failed to determine that family reunification was not viable on the basis of abuse, neglect, abandonment, or a similar basis found under state law. On appeal, the petitioner contends through counsel that he is eligible for SIJ classification.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was considered in rendering a decision on the appeal.

Section 203(b)(4) of the Act allocates immigrant visas to qualified special immigrant juveniles as described in section 101(a)(27)(J) of the Act. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008), enacted on December 23, 2008, amended the eligibility requirements for SIJ classification at section 101(a)(27)(J) of the Act, and accompanying adjustment of status eligibility requirements at section 245(h) of the Act, 8 U.S.C. § 1255(h). *See* section 235(d) of the TVPRA; *see also* Memo. from Donald Neufeld, Acting Assoc. Dir., U.S. Citizenship and Immig. Servs. (USCIS), et al., to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions* (Mar. 24, 2009) (hereinafter *TVPRA – SIJ Provisions Memo*). The SIJ provisions of the TVPRA are applicable to this appeal. *See* section 235(h) of the TVPRA.

Section 101(a)(27)(J) of the Act, as amended by section 235(d) of the TVPRA, describes a “special immigrant” as:

an immigrant who is present in the United States—

- (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
- (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence; and

- (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—
 - (I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and
 - (II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act[.]

The regulations define a “juvenile court” as “a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. § 204.11(a) (1993).

The [REDACTED] amended the [REDACTED] definition by expanding the group of aliens eligible for [REDACTED] classification to include aliens who have been placed under the custody of “an individual or entity appointed by a State or juvenile court.” TVPRA section 235(d)(1)(A). The [REDACTED] also removed the need for a juvenile court to deem a juvenile eligible for long-term foster care due to abuse, neglect or abandonment, and replaced it with a requirement that the juvenile court find that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law. *See id.*¹

Additionally, the [REDACTED] modified the two forms of consent—formerly “express” consent and “specific” consent—required for [REDACTED] petitions. First, instead of “expressly consent[ing] to the dependency order serving as a precondition to the grant of special immigrant juvenile status,” the new definition requires the Secretary of Homeland Security, through the USCIS Field Office Director, to “consent[] to the grant of special immigrant juvenile status.” [REDACTED] section 235(d)(1)(B). This consent determination “is an acknowledgement that the request for [REDACTED] classification is bona fide,” [REDACTED] *Provisions Memo* at 3, meaning that neither the dependency order nor the best interest determination was “sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect,” H.R. Rep. No. 105-405 at 130 (1997); *see also* Memo. from William R. Yates, Assoc. Dir. for Operations, U.S. Citizenship and Immig. Servs., to Reg. Dirs. & Dist. Dirs., *Memorandum #3 – Field Guidance on Special Immigrant Juvenile Status Petitions* (May 27, 2004) at 2 (hereinafter *SIJ Memo #3*). “An approval of an SIJ petition itself shall be evidence of the Secretary’s consent.” [REDACTED] *Provisions Memo* at 3. Second, the [REDACTED] transferred the “specific consent” function, which applies to certain juveniles in federal custody, from the Secretary of Homeland Security, as previously delegated to

¹ U.S. Citizenship and Immigration Services (USCIS) has long defined “eligible for long-term foster care” to mean “that a determination has been made by the juvenile court that family reunification is no longer a viable option.” *See* 8 C.F.R. § 204.11(a) (1993).

U.S. Immigration and Customs Enforcement, to the Secretary of Health and Human Services. TVPRA section 235(d)(1)(B).

The record reflects that the petitioner was born in Mexico on August 13, 1995, to [REDACTED] and [REDACTED]. See *Birth Certificate of [REDACTED]*. The petitioner arrived in the United States without admission or parole in or around October, 2000. On December 7, 2007, the petitioner's parents died in a fire. See *Death Certificates for [REDACTED]*.

On July 7, 2008, the State of Connecticut Court of Probate (hereinafter juvenile court), appointed the petitioner's paternal aunt, [REDACTED], and [REDACTED], as co-guardians of the petitioner.² See *Decree/Re/Appointment of Co-Guardian(s) of the Person of Minor*, dated July 7, 2008. The juvenile court made the following pertinent findings:

1. At the time said Application was filed, the subject minor resided in the Town of Bridgeport in said district, and the minor is not within the care of the Commissioner of Children and Families.
2. The parents of the minor child are deceased.
3. The minor, a native of Mexico, has no relatives in that country to be his custodian or guardian of the person and cannot return to Mexico; and to return the minor to Mexico would not be in . . . his best interest.

Id. On November 24, 2008, the juvenile court appointed [REDACTED] as successor guardians of the petitioner. See *Decree/Removal of Guardian and Appointment*, dated Nov. 24, 2008.

The petitioner filed his Petition for Special Immigrant (Form I-360) with USCIS on June 5, 2009, when he was 13 years old. The director denied the petition on December 14, 2010, and the petitioner timely appealed.

On appeal, the petitioner contends that the director erred in denying his petition because his status as an orphan does not preclude his eligibility for SIJ classification if he can show that he has been abandoned and that reunification with his parents is not viable based on such abandonment. *Brief on Appeal* at 2. The petitioner further contends that the juvenile court's July 21, 2008 order "effectively found that [the petitioner does] not have any parents, the equivalent of being abandoned with no hope of reunification with parents." *Id.* at 4.

The petitioner's contention that his status as an orphan does not necessarily preclude a grant of SIJ classification has merit. Nothing in the statute or the regulations specifically precludes eligibility where the petitioner has been orphaned. See section 101(a)(27)(J) of the Act; see also 8 C.F.R. § 204.11(a) (1993). However, the petitioner has not met his burden of showing that the

² In a previous order, the juvenile court, appointed [REDACTED] as co-guardians of the petitioner's estate. See *Decree for Appointing Guardian of Estate*, dated May 12, 2008.

juvenile court determined that reunification with one or both of his parents is not viable due to abuse, neglect, abandonment or a similar basis found under State law, as required by section 101(a)(27)(J)(i) of the Act. . *See, e.g.*, Conn. Gen. Stat. Ann. § 46b-120 (defining abused, dependent, neglected, and uncared for children and youth). Although the petitioner contends that the death of his parents is the equivalent of being abandoned, he has not provided any statutory or judicial authority to support his claim that orphaned children are considered to be abandoned under Connecticut law.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the petitioner to establish eligibility for the benefit sought. Here, the petitioner has not shown by a preponderance of the evidence that he is eligible for the benefit. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.